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No.

In the

SUPREME COURT OF THE UNITED STATES

October Term 1996

LAVOYD WAYNE HARDIN

Petitioner

V.

JAMES CUNNINGHAM

Respondent

SUPPLEMENTARY APPENDIX

Lavoyd Wayne Hardin, Pro-Se

Route 1, Box 127A

DeLeon, Texas 76444

Telephone No. (817) 893-2686

4 pp.

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
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By Betty Brown
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LAVOYD WAYNE HARDIN

VS. 4:95-CV-250-E

JAMES CUNNINGHAM

ORDER

Appellant Lavoyd Wayne Hardin has moved for relief from the Court's order of October 26, 1995, dismissing Hardin's appeal for lack of prosecution. The dismissal was based on Hardin's failure to file a statement of issues within fifteen days of filing the notice of appeal, as required by Bankruptcy Rule 8006. Indeed, although Hardin filed his notice of appeal on February 14, 1995,

and was put on notice of his failure to file the statement of issues by appellee's motion to dismiss, filed on May 2, 1995, Hardin has not filed the statement to date. Nor has Hardin filed his appeal brief which was due on April 26, 1995.

In support of his motion for relief under Rule 60, Hardin states only that he has been "having a terrible time getting mail in or out of DeLeon." This statement simply is insufficient to excuse lapses of six to eight months. Hardin does not claim he did not receive appellee's motion to dismiss or the Clerk's notice regarding the time for filing his appeal brief. Nor does he state that he mailed the statement of issues or appeal brief. Moreover, the Court notes that Hardin's motion to reconsider, which he signed on November 6, 1995, reached the Court and was filed on November 7, 1995, hardly evidence of significant delays in Hardin's mail.

Finding no basis for reconsidering its order of dismissal, the Court ORDERS that Hardin's motion for relief under Rule 60 is DENIED.

Signed this 15th day of November, 1995.

ELDON B. MAHON

UNITED STATES DISTRICT JUDGE